

Case Study

How Congressional Checks on Executive Branch Authority Derailed an EPA Administrator

In 1981, President Ronald Reagan appointed, and the Senate confirmed, Anne Gorsuch as Administrator of EPA. Gorsuch was a lawyer who had served in the Colorado legislature, but who had no experience in managing environmental programs or large organizations. As a legislator, she was a member of a group that called itself the “crazies,” whose agenda mainly consisted of State’s rights and opposition to Federal energy and environmental policies. She believed in voluntarism: that left to their own devices, States would achieve better environmental protection than they would under the heavy hand of Washington. She was also known for her fierce advocacy of the doctrine of strict statutory construction, i.e., of not prescribing in regulation that which was not explicitly called for in statute.

Reagan’s agenda for EPA was no secret, consisting of budget cuts and reductions in force, regulatory relief, and greater delegation of responsibility to the States. Shortly after the inauguration Reagan established a task force on regulatory relief, under the direction of James Miller, a political appointee to OMB and a deregulation enthusiast. An executive order provided OMB with veto authority over all agency regulations; the task force quickly targeted for possible deferral or cancellation several key rules relating to hazardous waste disposal and auto emissions.

While awaiting her Senate nomination hearing, Gorsuch maintained her office in the Department of the Interior, rather than at EPA. She met only infrequently with EPA’s career staff and surrounded herself instead with a small group of special assistants, most of whom had connections to James Watt (the Secretary of the Interior), Coors (the owner of the brewing company and a Reagan supporter), or the Reagan campaign effort. Gorsuch’s view of the Agency and its staff at the time was fairly skeptical.

Gorsuch quickly alienated career EPA staff with her aloof manner; the reported steady stream of meetings with industry representatives while at Interior; allegations of a “hit list” of career employees to be fired or transferred; and her staff which had political experience or experience in regulated industries, but limited environmental experience. Within a few months she abolished EPA’s enforcement office, farming its responsibilities out to the program offices.

Many members of Congress, including Republicans, did not display much enthusiasm either for Gorsuch’s agenda or her manner in carrying it out. Gorsuch was increasingly dogged by charges, based on leaked internal documents, that she was planning to level massive FY 1983 reductions in force and budget cuts that would put operating expenditures at 40 percent below their FY 1981 level. Quickly following the furor over the proposed budget cuts, in February 1982, Gorsuch suspended a regulatory ban on the disposal of containerized hazardous waste liquids in landfills. One member of Congress (a Democrat) called the decision “a glaring and outrageous example” of EPA’s “inactivity” in

the hazardous waste area and another (a Republican), said that “even as we sit here . . . the trucks are rolling into 900 landfills all over America carrying a deadly legacy that our children and grandchildren will have no choice but to accept.” The chemical industry offered no public support for the action, while the story received prominent play in both the national and local news media. After just 18 days Gorsuch issued a new rule restricting the disposal of liquids.

In the summer of 1982, John Dingell (D-Mich.) began an inquiry on the Agency’s use of Superfund money and the slow progress of a program for which money was readily available (through the trust fund). His staff, according to one account, received a “steady stream of leaks from within the agency . . . [showing] a pattern of political manipulation interwoven with absurd incompetence.” Particularly suspicious was the conduct of Rita Lavelle, Assistant Administrator for Solid Waste and Emergency Response and a former California corporate public relations specialist. In September, Dingell requested a number of documents relating to specific Superfund enforcement cases.¹ The Justice Department intervened, however, asking for all copies of the documents and instructing EPA to withhold them from Congress. Dingell issued a subpoena requiring Gorsuch to appear before the panel with the records; a month later another Congressional panel with Superfund jurisdiction issued a second subpoena to Gorsuch.

On November 30, the President, acting on the advice of his White House counsel (Ted Olsen) and the Attorney General, asserted executive privilege and instructed Gorsuch not to comply with the subpoena, explaining that “sensitive documents found in open law enforcement files should not be made available to the Congress or to the public except in extraordinary circumstances.” Leaders of both parties in Congress bridled at the administration’s action and the House, by a wide margin, voted Gorsuch in contempt of Congress on December 16. The Justice Department immediately filed suit to halt the contempt proceedings.

At Christmas time, freak floods led to a hazardous waste spillage and the evacuation of homes in Times Beach, Missouri. In short order after that, the administration’s suit was dismissed in court; Rita Lavelle was fired by Reagan (after she turned down a Gorsuch request to resign);² new conflict of interest allegations arose over Gorsuch staff; old controversies, such as the hit list resurfaced; more top EPA employees resigned; and the White House brought in a “management team” of experienced officials in a last-ditch attempt to abate the crisis. In early March, to her apparent disbelief, the Justice Department told Gorsuch that its responsibility to investigate the conflict of interest allegations and other charges of impropriety precluded its continued representation of her in the contempt and executive

¹The charge was that the administration delayed action to begin cleaning up the Stringfellow Acid Pits in California because it did not want Governor Jerry Brown (a Democrat), who was then running for the Senate, to get the credit. Rita Lavelle later testified that “there was a constant desire to tie the announcement of [Superfund] sites into election campaigns.”

²The only person indicted and found guilty of a crime was Rita Lavelle, who was convicted of perjuring herself in Congressional testimony.

privilege proceedings. On March 9, 1983, President Reagan accepted her resignation and Gorsuch announced that Congress would have full access to the documents in question. On March 21, Reagan nominated William Ruckelshaus, EPA's first Administrator, to take Gorsuch's place as EPA Administrator.

Although this ended the immediate difficulties, the administration's actions during this period had profound ramifications. On different occasions, Ruckelshaus and former Administrator Carol Browning reflected on the effects of these events. In an interview with EPA's History Office, Ruckelshaus said that, "the [Reagan] administration's avowed purpose of lessening the impact of regulation on society really had the opposite effect, at least with respect to the environment. To the extent it acted at all, Congress increased the degree of regulation, imposing new restrictions on flexibility and on the administration of the statutes."

Carol Browner, in a speech at Sweet Briar College announcing the Common Sense Initiative, said, "During the era when James Watt was Secretary of the Interior and Anne Gorsuch headed the EPA, the problems grew worse. Conflict and gridlock became firmly entrenched. Some in the industry took the Anne Gorsuch/James Watt ideology as a license not to comply with environmental regulations. Environmental groups sought to fill the vacuum by filing one court suit after another, charging the government with failure to enforce and implement the laws. Court orders and court-directed activities became a major instrument of environmental policy."

"And Congress, rightfully perceiving a lack of commitment to implementation of environmental laws, and responding to the legitimate concerns of the public, saw no alternative but to spell out every detail of not only what EPA must do but also what business must do."

It is instructive to note that within a few years following the resignation of Anne Gorsuch, Congress enacted some of the most prescriptive environmental legislation ever passed: the Hazardous and Solid Waste Amendments of 1984, Safe Drinking Water Act Amendments of 1986, Superfund Amendments and Reauthorization Act of 1986, and the Water Quality Act of 1987. All of these statutes spelled out precisely the content of future EPA regulations and the timeframe in which EPA was to act.

Discussion Questions :

- Who decides how active or inactive EPA is in a particular area?
- Did the Executive Branch abuse its authority?
- Why did Congress intervene? How?
- Do you see any lasting effects on the Agency from the Reagan/Gorsuch era?